

# **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Will Allen/797-2093 by Herb Hyman/797-1016

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** District 2

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH BUDGET CONSTRUCTION CO., INC FOR THE CONSTRUCTION OF THE DAVIE/COOPER CITY CHAMBER OF COMMERCE PARKING MODIFICATIONS.

**REPORT IN BRIEF:** The Town Council approved the bid by Budget Construction Co., Inc. for construction of the Davie/Cooper City Chamber of Commerce parking modifications by Resolution R-2005-142. Upon receipt of the approved resolution, the contractor was able to obtain the necessary insurance certificate, performance and payment bonds to be included in the contract document. Six (6) copies of the contract are attached for signature by appropriate Town staff.

**PREVIOUS ACTIONS:** Council approved the bid by Resolution R-2005-142.

**CONCURRENCES:** n/a.

**FISCAL IMPACT:**

Has request been budgeted? yes  
If yes, expected cost: \$561,441.50  
Account Name: CRA-Special Projects Account Number 010-0405-515-0502  
Additional Comments: Not applicable

**RECOMMENDATION(S):** Motion to approve the resolution.

**Attachment(s):**  
Six (6) copies of contract document

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH BUDGET CONSTRUCTION CO., INC. FOR THE CONSTRUCTION OF THE DAVIE/COOPER CITY CHAMBER OF COMMERCE PARKING MODIFICATIONS.

WHEREAS, the Town Council approved Resolution R-2005-142 accepting the bid from Budget Construction Co., Inc. for the construction of the Davie/Cooper City Chamber of Commerce parking modifications; and

WHEREAS, it is in the Town's best interest to execute a contract for such services; and

WHEREAS, after review, the Town Council authorizes the Mayor to execute a contract with Budget Construction Co., Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council authorizes the Mayor to execute a contract with Budget Construction Co., Inc. for construction of the Davie/Cooper City Chamber of Commerce parking modifications which is attached hereto and identified as Attachment "A".

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_

TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005

**SECTION 00500  
STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
ON THE BASIS OF UNIT PRICE**

THIS AGREEMENT is by and between the Town of Davie, a Florida Municipal Corporation (hereinafter called Owner) and Budget Construction Co., Inc. (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 - WORK**

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Davie – Cooper City Chamber of Commerce Parking Modifications, pursuant to the Project Manual and Specifications for Bid No: B-05-47, opened April 19, 2005 attached hereto and incorporated herein.

**ARTICLE 2 - PROJECT OWNER**

2.01 The Project Owner is the Town of Davie. Craven Thompson & Associates, Inc. shall act as Owner's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**ARTICLE 3 - PROJECT ENGINEER**

3.01 The Project has been designed by Craven Thompson & Associates, Inc., on behalf of the Davie Community Redevelopment Agency.

**ARTICLE 4 - CONTRACT TIMES**

4.01 *Time of the Essence*

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

The Work will be substantially completed within 150 days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 30 days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties

Davie – Cooper City Chamber of Commerce  
Parking Modifications  
CT&A Project No. 03-0060

00500-1

also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$ 100.00 for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$ 100.00 for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

#### **ARTICLE 5 - CONTRACT PRICE**

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to below: For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto as an exhibit.

#### **ARTICLE 6 - PAYMENT PROCEDURES**

##### **6.01 Submittal and Processing of Payments**

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

##### **6.02 Progress Payments; Retainage**

OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

A. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions. Ninety (90) % of Work completed (with the balance being retainage). If the Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be 5% retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 95% of the Work completed less the aggregate of payments previously made; and

B. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 100 % of the Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 100% of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions. OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

**ARTICLE 7 - INTEREST**

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest in accordance with the provisions of the Florida Prompt Payment Act. Section 218.70, et seq., Florida Statutes.

**ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS**

8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto

F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 9 - CONTRACT DOCUMENTS

### 9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 00500-1 to 00500-8, inclusive);
2. Performance Bond (pages 00610-1 to 00610-2, inclusive);
3. Payment Bond (pages 00620-1 to 00620-2, inclusive);
4. Other Bonds (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
5. General Conditions (pages 00700-1 to 00700-42, inclusive);
6. Supplementary Conditions (pages 00800-1 to 00800-4, inclusive);
7. Technical Specifications as listed in the table of contents of the Project Manual;
8. Drawings consisting of the following:

<u>Sheet No.</u>	<u>Sheet Description</u>
C-0	Cover Sheet
SP-1	Site Plan
EZ-95-03	Survey (Chamber Site)
EZ-109-03	Survey (Arena Parking)
EZ-19-04	Survey (SW 42 <sup>nd</sup> Street)
C-1	General Notes and Specifications
C-2	Demolition Plan
C-3	Paving Grading and Drainage Plan
C-4	Paving Grading and Drainage Details
C-5	Paving Grading and Drainage Details
TS-1	Existing Tree Inventory
LP-1	Landscape Plan (Chamber Site)
LP-2	Landscape Plan (Arena Parking)
IR-1	Irrigation Plan (Chamber Site)
IR-2	Irrigation Plan (Arena Parking)
IR-3	Irrigation Details and Specifications
E-1	Lighting and Photometric Plan
E-2	Light Pole Details

9. Addenda (numbers ~~1 to 1000~~, inclusive);
10. Exhibits to this Agreement (enumerated as follows):
  - a. Notice to Proceed (one page, inclusive);
  - b. CONTRACTOR's Bid (pages 00300-1 to 00300-15, inclusive);
  - c. Documentation submitted by CONTRACTOR prior to Notice of Award (\_\_\_ pages, inclusive);
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto, which items must be in writing signed by OWNER and CONTRACTOR to be effective:
  - a. Written Amendments;
  - b. Work Change Directives;
  - c. Change Order(s).

B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

#### **ARTICLE 10 - MISCELLANEOUS**

##### **10.01 Terms**

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

##### **10.02 Assignment of Contract**

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

##### **10.03 Successors and Assigns**

A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

#### 10.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 10.05 Indemnification

A. The Contractor agrees to indemnify and hold the Town and its Agents harmless from any and all claims, suits, actions, damages, causes of action, or attorney fees, arising from any personal injury, loss of life, or damage to person or property sustained by reason of, or as a result of the Work performed.

B. The Contractor agrees to indemnify and hold the Town and its Agents harmless from any and all claims, suits, actions, damages, causes of action, or attorney fees, arising from any personal injury, loss of life, or damage to person or property sustained by reason of, or as a result of the negligence of the Contractor, his employees, agents, or assigns.

(This space left blank intentionally)



IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in quadruplicate. One counterpart each has been delivered to Owner, Contractor, Surety and Engineer. All portions of the Contract Documents have been designed or identified by Owner and Contractor or by Engineer on their behalf.

This Agreement will be effective on \_\_\_\_\_, 20 \_\_\_\_\_.

OWNER:

Town of Davie  
6591 Orange Drive  
Davie, Florida 33314

BY: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

(CORPORATE SEAL)

Attest: \_\_\_\_\_

ADDRESS FOR GIVING NOTICES

6591 Orange Drive  
Davie, Florida 33314

Attach evidence of authority to sign  
and resolution or other document  
authorizing execution of Agreement.

APPROVED AS TO FORM:

\_\_\_\_\_  
TOWN ATTORNEY

CONTRACTOR:

Budget Construction Co., Inc.  
12450 NW South River Drive  
Miami, Florida 33178

BY: \_\_\_\_\_

Ellis A. Sanchez  
Print Name

Vice President  
Title

(CORPORATE SEAL)

Attest: \_\_\_\_\_

ADDRESS FOR GIVING NOTICES

12450 N.W. South River Drive  
Miami, Fla. 33178

License No. CUC057400

Agent for service of process:

Ellis A. Sanchez

(If Contractor is a corporation, complete the  
certificate of authority to sign, page 00500-8)

Davie – Cooper City Chamber of Commerce  
Parking Modifications  
CT&A Project No. 03-0060

00500-7

STATE OF FLORIDA)  
COUNTY OF Dade)  
SS

"RESOLVED, that Ellis A. Sanchez, as Vice President of the corporation, be and is hereby authorized to execute the Contract dated                      20 between the Town of Davie, a municipal corporation, and this corporation, and that this execution thereof, attested by the Secretary of the corporation and with corporate seal affixed, shall be the official act and deed of this corporation."

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the corporation  
this 3rd day of June, 20 05.

END OF DOCUMENT